

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

31658

FILE: B-218904**DATE:** July 10, 1985

MATTER OF: Department of State--Availability of
lump-sum payment to the IAEA for
insurance cost.

DIGEST:

The General Accounting Office would not object to the State Department reimbursing the International Atomic Energy Agency (IAEA) for a lump-sum payment made by IAEA to its insurance company if the payment is determined, pursuant to the voluntary contribution provision of the Foreign Assistance Act, to "further the purposes of that Act." 22 U.S.C. § 2221(a).

The Comptroller of the Department of State (State) has requested an advance decision on whether State may reimburse the International Atomic Energy Agency (IAEA) for a lump-sum payment made by IAEA to its insurance company.^{1/} The IAEA payment to its insurance carrier was made in order to hold down IAEA's health insurance premiums for next year. The premiums were due to rise over 17 percent due to a payment made out of the IAEA insurance fund. The insurance payment was made to cover the costs of medical expenses incurred by a cost-free expert (CFE) provided to the IAEA under the United States' Program of Technical Assistance to Safeguards (POTAS). As explained more fully below, POTAS is funded under the broad authority contained in the Foreign Assistance Act's voluntary contribution provision. 22 U.S.C. § 2221(a). Although it is not clear that the payment is necessary, our Office would not object to the reimbursement to IAEA if it is found to "further the purposes [of the Foreign Assistance Act]."

Resolution of the legal issue presented in this case has been hampered by the lack of the kind of documentation usually relied on to ascertain relevant facts. For example, a copy of a written agreement between the United States and the IAEA

^{1/} The IAEA was established in 1957 as an autonomous agency of the United Nations (UN) to foster the peaceful use of nuclear energy under effective safeguards. It receives its financial support from assessments of member nations based on a UN scale of assessments, and from voluntary contributions.

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setting up the POTAS cost-free expert program was not provided. Nor were we furnished a copy of a sample special service agreement between the IAEA and its cost-free experts or a copy of IAEA's agreement with its insurance carrier. More importantly, the submission suggests that the employer's share of health insurance premiums, including the share attributable to cost-free experts, is borne by IAEA through member country assessments rather than by contributions under the POTAS program. Later information provided informally, however, indicates that the employer's share of health insurance premiums has historically been borne by POTAS contributions. While our normal procedure would be to formally request more information from the Department of State, because of the need for a quick reply we have answered the question on the assumption that this absent material does not contravene the facts we rely on.

According to the submission, a dependent of one of the cost-free experts provided to the IAEA under the United States POTAS program incurred an illness of catastrophic proportions, resulting in over \$125,000 in medical bills being submitted to and paid by IAEA's insurance carrier. Under IAEA's agreement with its insurance carrier, the carrier apparently is entitled to increase the premium rate based on the previous year's claims experience. Since the pool of premium payers is small, a substantial medical payment will have a significant effect on the next year's premium rate. The insurance plan administrator has informed IAEA that due to the size of this payment, premiums will have to be increased by over 17 percent.

However, the insurance company expressed a willingness to accept a lump-sum payment from IAEA in order to hold the premium rate down. We understand that IAEA has paid the insurance company approximately \$125,000. IAEA has requested that the United States reimburse the agency for the payment since it is attributable to the medical expenses of one of the POTAS cost-free experts.

State has expressed concern that if the United States does not make some arrangement to reimburse IAEA, the effectiveness of the entire cost-free expert program could be impaired. Therefore, State is proposing a reimbursement chargeable to the POTAS account on a one-time, non-precedential basis.

POTAS, a special interagency program, was established by the United States to assist IAEA in improving its safeguards

capability.^{2/} POTAS consists of specific technical projects requested by IAEA which the United States agrees to undertake. One important aspect of POTAS is the furnishing of cost-free experts in nuclear safeguards to IAEA. The experts are provided for a limited time, generally 18 months to 2 years, to do specifically agreed upon jobs requiring special technical or management skills which supplement IAEA's regular operations.

Although the United States reimburses the IAEA for the salaries of the cost-free experts, these experts are not considered employees of the United States. Instead, the experts work for the IAEA under a special service agreement negotiated between the IAEA and the expert. Until this problem arose, the IAEA offered these employees the same benefits package as its regular employees except for retirement benefits. Under this arrangement, the cost-free experts were placed in the same health insurance program as IAEA's regular staff.^{3/} Health insurance premium costs are split between the IAEA and the employee. As discussed above, POTAS apparently reimburses the IAEA for the employer's share of premiums paid on behalf of cost-free experts provided under the POTAS program.

It appears, therefore, that under the current arrangement with the IAEA, all costs directly attributable to the experts -

^{2/} The Departments of State and Energy, the Arms Control and Disarmament Agency (ADCA) and the Nuclear Regulatory Commission (NRC) each have roles within POTAS. The Technical Support Coordinating Committee (TSCC), chaired by State, with representatives from Energy, ACDA and NRC is responsible for detailed policy guidance and oversight of the Program. Energy provides overall program management and distributes program funds. ACDA and NRC contribute managerial and technical resources. For more elaboration on IAEA and the POTAS program in particular, see, New and Better Equipment Being Made Available for International Nuclear Safeguards, GAO/NSIAD-84-46, June 14, 1984.

^{3/} According to the submission, some changes in the contractual relationship between the IAEA and cost-free experts are contemplated. Cost-free experts will no longer participate in the medical insurance plan of regular staff. It appears that alternative options are being explored and a final decision on what type of insurance plan to offer, if any, will be made at a later date.

are paid by the United States. This includes salary, travel to and from Vienna, Austria (where the IAEA is located), and health insurance premium costs. The IAEA pays incidental expenses including the costs of furnishing the experts with work space, materials, and secretarial assistance.

However, the insurance payment here arose out of an insurance contract between IAEA, its insurance carrier, and the employee. IAEA made the decision to include the experts in the health insurance plan of its regular staff and IAEA negotiated the benefit package with them. Although the medical expenses were incurred by a dependent of a cost-free expert, they were costs attributable to the IAEA health insurance program and not related to the specific task of the employee. Moreover, it was IAEA's decision to negotiate lower premium costs based on a lump-sum payment with its current insurance carrier rather than to attempt to procure lower cost insurance coverage from another company.

Accordingly, it is difficult to characterize an elective payment by the IAEA, the purpose of which is to reduce future premiums obligations of IAEA and its employees, as a financial obligation of the United States. It also would not appear that such a payment is one within the existing agreement with regard to cost-free experts between the United States and IAEA.

Nevertheless, the Foreign Assistance Act authority pursuant to which the POTAS program is funded is quite broad. That authority, contained in section 301(a) of the Foreign Assistance Act, provided as follows:

"When he determines it to be in the national interest, the President is authorized to make voluntary contributions on a grant basis to international organizations * * * on such terms and conditions as he may determine,

in order to further the purpose of [the Foreign Assistance Act, Part I] 22 U.S.C. § 2221(a).4/

The responsibility for determining terms and conditions under which voluntary contributions may be made to international organizations, as well as for determining that such contributions will further the purposes of the Foreign Assistance Act, is vested in the President, or his delegee.5/

Accordingly, if the person to whom the Presidential authority with respect to the POTAS program has been delegated makes a determination that payment of the amount in question would be an appropriate expense of the POTAS program, we would not object to it on legal grounds.

Sheldon J. Fowler
for Comptroller General
of the United States

4/ Under the Foreign Assistance and Related Programs Appropriation Act of 1985 (continued in the Continuing Appropriation Act for 1985) \$14,814,000 was made available for IAEA for necessary expenses to carry out the purpose of section 301(a). We understand that \$5 or \$6 million was earmarked for POTAS.

5/ Various functions of the President under this section have been delegated. Ex. Order No. 12163, as amended, Sept. 29, 1979, 44 Fed. Reg. 56673. Presidential certification responsibility concerning the United Nations Relief and Work Agency was delegated to the Secretary of State, § 1-201(a)(1) supra, and the Director of the U.S. International Development Cooperation Agency was delegated the certification responsibility pertaining to international development programs. § 1-102(d), supra.